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SUMMARY RECORD OF THE 1083rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 July 1991 at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Draft general comment on article 7 of the Covenant (CCPR/C/42/CRP.2; CCPR/C/21/Rev.1) (continued)

1. The CHAIRMAN invited members of the Committee to resume consideration of the revised draft general comment on article 7 of the Covenant, by taking up paragraph 10 of the text of the Working Group's recommendation (CCPR/C/42/CRP.2). He said that Mrs. Higgins had made some written suggestions, the text of which, without a symbol and in English only, had just been distributed to members of the Committee. In particular, Mrs. Higgins proposed adding to the last sentence of paragraph 10 the words "prompt and regular" after the words "access to doctors" and replacing the phrase "without prejudice to the investigation" by the term "under appropriate supervision".

2. He believed that the Committee was ready to accept the first of Mrs. Higgins' two proposals.

3. Mr. EL SHAFEI thought that it would be useful to state explicitly that appropriate supervision must be exercised with regard to access to detained persons, but in his view it was not necessary simultaneously to delete the expression "without prejudice to the investigation" which referred to a specific and important idea.

4. Mr. HERNDL said that he also would like a balanced formulation combining the two concepts since they were both important and it would be regrettable to retain one at the expense of the other.

5. Mr. WENNERGREN, said that the general comment adopted on 27 July 1982 by the Committee (CCPR/C/21/Rev.1, page 6), had not at that time made a distinction between doctors, lawyers and family members with regard to the right of access to detainees, while according to the revision currently under consideration, family members would be treated differently. He wondered whether that distinction was really justified. Furthermore, he wondered whether the Committee should imply that incommunicado detention must be totally prohibited or whether it would not be better to say that complete isolation of the detainee, preventing him from communicating with a doctor, a lawyer or his family, should be prohibited. He personally thought that a certain form of isolation might be necessary, but detention totally incommunicado was not really desirable. He hoped that all the necessary distinctions would be reflected in the Committee's text.

6. Mrs. CHANET also thought that the two ideas which Mr. El Shafei, Mr. Herndl and Mr. Wennergren had stressed could be expressed jointly and that one did not necessarily replace the other. The fact remained that, in certain serious cases, particularly those involving drug trafficking, it was essential that the person concerned should have no contact with the outside world and particularly with certain family members who might be implicated in the same traffic. In any case, the restrictions imposed should be reasonable.

7. Mr. MYULLERSON said he agreed with Mr. Wennergren. The Covenant did not in fact totally prohibit incommunicado detention although that might in the event lead to the suspension of certain rights proclaimed in the Covenant, including article 7. Nevertheless, since the concept of incommunicado detention was not completely clear, it would perhaps be preferable for the Committee to revert to the wording used in the comment adopted in July 1982, which seemed less categorical.

8. Mr. MAVROMMATIS said that the Committee could not totally exclude the possibility of incommunicado detention without stating precisely what it understood by that type of measure. In that respect, the earlier general comment was preferable. Incommunicado detention might indeed sometimes be necessary in the interests of the investigation, but lawyers should nevertheless have a right of access distinct from that of doctors and family members and should be able to have contact with their clients at any time, in the interests of the defence. Furthermore, he wondered whether it was necessary to state that doctors should have "regular" access.

9. Mr. LALLAH recalled that, in its earlier reflections on article 7, the Committee had stressed that the question of incommunicado detention was closely linked with the question of torture. Furthermore, referring to the principle of presumption of innocence, he said that the period of pre-trial detention was when protective measures should be the strictest, in order to avoid any likelihood of statements or confessions being extorted. Accordingly, incommunicado detention could be an abusive measure in cases where it was not justified by the requirements of the investigation. Furthermore, when it was imposed, it should be subject to the strictest supervision and should be continued only for the minimum period essential. In that regard, he thought that the comment of 27 July 1982 was preferable.

10. Mr. SADI said he shared Mr. Lallah's opinion. Ninety-nine per cent of cases of torture occurred when the individual was detained incommunicado. That should prompt the Committee to exercise the utmost caution. Furthermore, he wondered whether, among the people who should have access to detainees, the Committee should not mention representatives of organizations such as the International Committee of the Red Cross and Amnesty International, which were particularly well placed to report on that type of situation.

11. Mr. PRADO VALLEJO said he had observed that, particularly in Latin-American countries, the period of incommunicado detention was the hardest and most difficult for detainees and that cases of torture and extortion of confessions by forcible or degrading means always occurred during that period. The Committee should therefore stress that it should be imposed only when absolutely necessary and for a reasonable period, which must not be extended. In that connection, account must also be taken of the principle of presumption of innocence which applied to all detainees, even in cases of drug trafficking, in which innocent persons were sometimes subjected to torture or condemned without proof. Furthermore, while doctors and lawyers must obviously have access to detainees, it would also be desirable for those responsible for the investigation as well as a representative of the judiciary to have the same access. The legal concept of incommunicado detention must be more clearly defined.

12. Mrs. CHANET recalled that in the earlier text (27 July 1982), the restriction conveyed by the words "without prejudice to the investigation" (para. 1) applied not only to family members, but also to doctors and lawyers, whereas in the new text proposed by the Working Group, it would not apply to doctors and lawyers who would have absolute right of access. A wording must be found to indicate that the access of doctors and lawyers was not subject to any restriction and that, in respect of family members, the State must indicate the reasonable restrictions it was imposing in conformity with national legislation.

13. Mr. AGUILA URBINA said he shared Mrs. Chanet's opinion and endorsed the comments of Mr. Lallah and Mr. Sadi. In the Latin-American region in particular, torture was widely used by almost all Governments and was practised only in the context of incommunicado detention. For that reason, strict measures should be insisted upon, above all with regard to the right of access which must be granted to doctors independent of the prison authorities. The problem was particularly acute in Latin-American countries where drug trafficking cases were often used as a pretext for persecuting political opponents.

14. Mr. LALLAH said that, as Mrs. Chanet had remarked, the wording proposed by the Working Group (CCPR/C/42/CRP.2) was an improvement on the former text (CCPR/C/21/Rev.1) in the sense that it completely prohibited refusal of access to doctors and lawyers, with restrictions being provided for in the case of family members. Personally, however, he preferred the proposal of Mrs. Higgins because it implied that, in respect of family members, access could be granted "under appropriate supervision". It was conceivable that, during an investigation, the judicial authorities might fear that visits would be used to pass on information to the family and then to the outside world. Members of the Committee would perhaps remember that, in considering the report of a State party whose legal system offered fairly substantial guarantees, they had noted that right of access granted to lawyers was subject to numerous restrictions. Accordingly, he was disposed to opt for Mrs. Higgins' suggestion to replace the words "without prejudice to the investigation" by "under appropriate supervision" which eliminated any loophole which the State party might turn to its advantage.

15. The CHAIRMAN said he wondered whether it was not possible to find a solution combining the idea of supervision with that of the requirements of the investigation by using a formulation such as: "under such supervision as is necessary to avoid prejudice to the investigation". That wording did not say that there must be supervision but that it might be necessary to exercise it.

16. Mr. WENNERGREN said that the text proposed by the Working Group (CCPR/C/42/CRP.2, para. 10) and expounded by Mrs. Chanet did not mean that incommunicado detention was totally forbidden, but proposed a modified regime of it by making provision for visits by doctors and lawyers as well as, in normal circumstances, by family members. If that interpretation was the correct one, he would like to propose, for reasons of clarity, that the text should be amended by deleting only two words in the English text, namely "and for", so that it read: "Provisions should also be made for incommunicado detention to be prohibited, giving access to doctors and lawyers ...". The rest of the sentence would remain unchanged.

17. Mrs. CHANET thought that the solution could be found by taking up the Chairman's idea and dividing the sentence into two parts. In her opinion, in the last sentence of paragraph 10, there should be a full stop after the word "lawyers" and then in another sentence it should be stated that family members would be granted access, if necessary under supervision if such supervision was justified by the requirements of the investigation. With that wording, the restriction would not apply to doctors or lawyers, and would apply to family members only in some, rather than in all, cases.

18. Mr. SADI said that the Chairman's formulation was acceptable to him and observed that members of the family were often the first able to make it known that a detainee had been tortured, since, for professional reasons lawyers, like doctors, were somewhat guarded. Furthermore, he did not see how visits by family members to a detainee could prejudice an investigation. It was therefore preferable to delete the words "without prejudice to the investigation" and to introduce the idea of appropriate supervision in respect of family visits. He also thought that denying a detained person the opportunity of seeing family members over a long period could constitute a form of psychological torture.

19. Mr. WENNERGREN said that it must not be forgotten that family members were not always perfectly innocent and that sometimes they belonged to the same gang as the detainee. It was not therefore desirable to authorize visits of members of the family when they were the detainee's partners in crime, although that was not usually the case.

20. Mr. AGUILAR URBINA, recalling that article 7 of the Covenant dealt with torture, said that Mr. Sadi was right to say that it was often through the family that it became known that a detainee had been tortured. The aim must be to protect the victim, not the torturer. He himself had had occasion, in the course of his duties in Costa Rica, to visit torture victims in the frontier areas with Panama and Nicaragua and he wondered whether one could make an a priori judgement, as Mr. Wennergren had done, by taking the view that members of the detainee's family were often criminals themselves even if it was true that they helped him and sometimes participated in his criminal activities. He endorsed the first proposal of Mrs. Higgins ("prompt and regular" access to detainees) and proposed that the end of the final sentence of paragraph 10 should be redrafted by deleting the words "without prejudice to the investigation" and saying: "as well as to family members, under suitable supervision when the investigation so requires, as a guarantee for the increased protection of detainees".

21. Mr. DIMITRIJEVIC said that the wording proposed by the Chairman was the best, since it had the merit of stating clearly that visits by family members should not always be under supervision, while denying to the State party any pretext it might seize upon to forbid visits. The text proposed by the Working Group, by referring to prejudice to the investigation, enabled the State to justify prohibiting visits by family members on those grounds. The new wording would have a double advantage, in that it stated that visits by family members must always be authorized while giving the State the possibility of requiring that they should be conducted under supervision when they might prejudice the investigation.

22. There was one point which worried him and which had not been taken into account in the text proposed by the Working Group, namely, the consequences of total isolation of prisoners, that was to say the problem of sensory isolation. There must be a sentence, at the end of paragraph 10, for example, or elsewhere in the text, stating that "the Committee is of the opinion that total and prolonged isolation of a detainee may amount to certain acts prohibited under article 7 of the Covenant". It was not only a question of incommunicado detention in the usual sense of the term, but of treatment that might amount to psychological torture when the detainee was deprived of all contact (visual, auditory or other) with the outside world. That point deserved to be included in the text.

23. The CHAIRMAN said that he, too, thought it would be useful to make that point clear.

24. Mr. WENNERGREN, referring to comments by members of the Committee who were concerned about the threat of torture to persons held in incommunicado detention, recalled that the Committee was drafting a general comment for all countries and not only those where torture was practised. Account must therefore also be taken of the need to provide for an unrestricted regime of incommunicado detention in some cases.

25. Mr. Lallah had observed that the detainee was presumed innocent; that was true, but it was also true that the detainee was a suspect and that an investigation had to be conducted into a crime. A detainee could not claim, on the grounds of presumption of innocence, that he had the right not to be suspected and to request that there should not be an investigation into the crime. There were very serious crimes (espionage, for example) which might require measures of isolation to prevent the detainee from reading newspapers, listening to the radio, looking at television or exchanging correspondence with the outside world. In those cases, such measures were necessary to establish the truth.

26. Mr. PRADO VALLEJO said that the point raised by Mr. Dimitrijevic was basic and that he had been going to make a proposal along the same lines himself. The information received by members of the Committee from human rights organizations such as Amnesty International showed clearly that torture was practised in a large number of countries. Mr. Wennergren's viewpoint was understandable, but the weight of concrete evidence made it necessary to refer in the text to the problem of the psychological torture which incommunicado detention inflicted and which could even lead to insanity.

27. Mr. AGUILAR URBINA said that he shared Mr. Dimitrijevic's view on total isolation and that of Mr. Prado Vallejo on the fact that it was a form of torture which could lead to insanity. Furthermore, with regard to the observations of Mr. Wennergren, he pointed out that, in his native region, the behaviour of lower-ranking police officers towards detainees might sometimes be regarded as torture. There were many complaints about such behaviour, and after investigation it was not unusual for policemen found guilty of acts contrary to article 7 to be dismissed. Although it could not be presumed that torture was the rule, the fact that it was used could not be overlooked. Even if it was practised in only one country, thought must be given to ways of preventing it in that country.

28. Mr. ANDO said that the general comment under consideration related to article 7, so that incommunicado detention was dealt with in connection with torture and cruel, inhuman or degrading treatment. The wordings suggested actually were not in fact so different from each other and he could easily envisage a text which combined the Chairman's proposal and that of Mr. Wennergren. The additional sentence proposed by Mr. Dimitrijevic went indeed to the heart of the matter, and it was a fact that incommunicado detention over a prolonged period was one of the acts prohibited under article 7. Accordingly, most of the ideas expressed could be accommodated in a new wording.

29. Mr. EL SHAFEI proposed that reference should be made not to prohibition of incommunicado detention, which might be deemed necessary by the authorities, but rather to provisions against incommunicado detention. The beginning of the last sentence in paragraph 10 might be amended to read: "Provisions should be made against incommunicado detention, by giving prompt and regular access to doctors and lawyers ...".

30. Mr. MYULLERSON supported the proposal, observing that incommunicado detention lasted for 24 hours in most cases and that it was not for the Committee to lay down the law, which it would be doing, if it prohibited that type of detention.

31. Mr. LALLAH asked whether the sentence proposed by Mr. Dimitrijevic about prolonged total isolation referred only to the period of detention during investigation or also to the term of imprisonment being served by a convicted person.

32. Mr. DIMITRIJEVIC said that his proposal should apply to both detained and imprisoned persons.

33. Mr. AGUILAR URBINA said that the amendment proposed by Mr. El Shafei (provisions made "against incommunicado detention") was difficult to insert in the Spanish text and that the resulting sentence would have the effect of giving enormous power to the State party. However, he had no objection to the proposal in principle.

34. Mr. MAVROMMATIS said he thought Mr. Dimitrijevic's proposal was a useful addition, but he feared that the Committee might appear too dogmatic in asserting that prolonged incommunicado detention might amount to acts prohibited under article 7. There were cases where incommunicado detention was required to ensure the safety of the detainee, whose life might be endangered if he was not separated from other prisoners. It was not necessarily the duration of incommunicado detention which involved inhuman treatment, but the other conditions generally associated with it, such as imprisonment in very small, dark cells. It might perhaps be better to tone down the statement by saying, for example, "might amount to acts prohibited under Article 7.".

35. Mr. SADI said that he recognized that in some cases a prisoner might have to be isolated for his own safety. Nevertheless, that measure was completely different from what the Committee meant by incommunicado detention and it did not imply that the detainee was cut off from the outside world. It was the latter case with which the Committee was concerned.

36. Mrs. CHANET said that there was a difference between the wording used in the Committee's earlier general comment on article 7 (CCPR/C/21/Rev.1) and in the Working Group's current draft, on the one hand, and the wording proposed by Mr. El Shafei, on the other. She personally preferred a wording which laid down the principle of the prohibition of incommunicado detention.

37. It was true that there were cases where the detainee was isolated in his own interests. However, what Mr. Dimitrijevic had in mind, and what must be mentioned in the general comment, was the sensory isolation practised in certain European prisons which involved depriving the detainee of all contact, not only with the outside world, but also with the prison environment. Everything, including the provision of food was carried out by electronic means, and the detainee had absolutely no human contact at all. Such a practice had been rightly considered by the European authorities as inhuman treatment, and even torture. It was therefore necessary to find a wording which alluded to sensory deprivation.

38. Mr. ANDO proposed toning down the wording suggested by Mr. Mavrommatis by stating: "Prolonged total isolation of the detainee can under certain circumstances amount to ...".

39. Mr. EL SHAFEI said that, when he had proposed replacing the idea of prohibition by a less forceful wording ("provisions should be made against incommunicado detention"), his intention had been to indicate that the Committee recognized that States parties were occasionally obliged to have recourse to incommunicado detention, for example, during the 24 hours following arrest, for the requirements of the investigation. The Committee must be pragmatic and work out a general comment acceptable to everyone.

40. Furthermore, a distinction must be made between access for doctors and lawyers and access for the family, the latter not being a priority for the protection of the individual, as compared with lawyers.

41. The CHAIRMAN said that there was no substantive difference between the wording used in the original general comment on article 7 and in the Working Group's draft, on the one hand, and the wording proposed by Mr. El Shafei on the other. With regard to Mr. Wennergren's proposal, he thought it would be better to keep the words "and for" in the English version.

42. Mr. SADI said that he accepted Mr. El Shafei's proposal but he had doubts about the latter's contention regarding lawyers, since it was hard to imagine that a lawyer assigned by the court would take the part of a detainee who had been tortured and inform the authorities. The best guarantee of a detainee's protection was the possibility of visits by family members.

43. Mr. MYULLERSON asked the Chairman to give his reasons for wishing to retain the words "and for" in the English text. It appeared to him that incommunicado detention automatically excluded access to lawyers and doctors and conversely, if provisions were made against incommunicado detention, they included the granting of right of access to lawyers and doctors.

44. Mr. WENNERGREN asked what the exact meaning was of the words "provisions should be made against incommunicado detention"; if the idea was that incommunicado detention was not acceptable in any circumstances, he was opposed to it because it was occasionally legitimate to keep someone incommunicado for short periods.

45. Mr. AGUILAR URBINA said he was firmly opposed to the deletion of the conjunction, at least in the Spanish text. If the Committee accepted the amendment proposed by Mr. El Shafei ("provisions against", instead of "provisions ... to be prohibited") by retaining the conjunction "y" in Spanish, "and for" in English), the possibility of authorizing incommunicado detention in certain cases remained open. On the other hand, if the conjunction was deleted, not only was the State party authorized to make use of incommunicado detention, but in addition that form of detention became the rule, which he could not accept. He could accept the replacement of a position of principle prohibiting incommunicado detention by a less rigid position, provided the conjunction was retained.

46. Mrs. CHANET supported Mr. Aguilar Urbina. In French, to say that provisions should be taken "against incommunicado detention by giving access to doctors and lawyers" meant that any other form of prohibition of incommunicado detention was excluded, although there were other forms.

47. The CHAIRMAN stressed that the reason advanced by Mrs. Chanet was precisely the one for which he favoured retaining the words "and for" in the English text, provided that the same idea was expressed in the other working languages.

48. Mr. LALLAH said that he had no preference for either wording. On the other hand, he wished to dissociate himself firmly from the opinion of Mr. Wennergren and Mr. El Shafei that the Covenant authorized incommunicado detention for short periods, for example, for 24 hours following arrest. It might be that there was confusion on that point arising from the obligation established in the Covenant to bring all arrested persons before a court within 24 hours. Nothing in the Covenant authorized a State to hold individuals incommunicado for any period at all. For that reason he hoped that the wording decided upon by the Committee would be as firm as possible.

49. Mr. WENNERGREN said that he was quite aware that the Covenant did not authorize incommunicado detention, but in reality there was no mention of that type of detention anywhere in the Covenant. In his view, the practice was not prohibited provided that it did not amount to cruel, inhuman or degrading treatment.

50. Mr. AGUILAR URBINA insisted that the conjunction should be retained in the three languages, since some English-speaking members of the Committee seemed to think that it made no difference. If such was the case, it might as well be retained in all three languages.

51. Furthermore, he completely endorsed what Mr. Lallah had said.

52. Mr. SADI said that he also endorsed Mr. Lallah's views.

53. He also observed that, in the paragraph devoted to incommunicado detention, there was no mention of one element which might nevertheless be of importance to certain religious communities, namely, giving priests access to detainees. That was an oversight which could easily be remedied.

54. Mr. DIMITRIJEVIC said that he also considered that there was nothing in the Covenant authorizing incommunicado detention, whatever the circumstances. It seemed to him that all the members of the Committee were in agreement on substance, but that they had not found a wording to express what they wanted. On the one hand, the Committee was generally opposed to incommunicado detention and recommended that States parties should legislate accordingly; on the other hand, the Committee wished to set out what it regarded as being the minimum protection that a detainee should be afforded. It was possible to convey the two ideas in two separate sentences. The first part of the sentence proposed should be retained ("Provisions should also be made against incommunicado detention"). The second sentence would read: "The minimal protection of the detainee consists of having access to doctors and lawyers and, without prejudice to the investigation, to family members".

55. Furthermore, it was true that there might be cases where a prisoner's safety required separation from the others, but he had been thinking of the practice of sensory isolation, which could indeed be regarded as cruel treatment. To be less dogmatic, in compliance with the wish of Mr. Mavrommatis, it would be sufficient to say: "Prolonged total isolation may amount to acts ...".

56. The CHAIRMAN asked whether the compromise proposal put forward by Mr. Dimitrijevic had the approval of the Committee. If he heard no objection, he would take it that it was adopted.

57. It was so decided.

58. The CHAIRMAN invited the Committee to consider the third of the amendments proposed by Mrs. Higgins to paragraph 10 of the draft general comment on article 7 of the Covenant (CCPR/C/42/CRP.2). Mrs. Higgins proposed inserting the following in that paragraph: "The Committee recommends that the time and place of all interrogations be recorded, together with the names of all those present. This information should be open to the detainees' lawyers and families." If the Committee approved to Mrs. Higgins' proposal, those two sentences could be inserted immediately before the last sentence in paragraph 10.

59. Mr. EL SHAFEI said that he wondered about the need for that addition seeing that the third sentence of paragraph 10 recommended that detainees should be held in places officially recognized as places of detention and that their names and places of detention should be kept in a register available to those concerned, such as relatives and friends, which seemed to him to meet Mrs. Higgins' concern. In that sense, the proposed amendment appeared superfluous.

60. The CHAIRMAN said as he understood it, Mrs. Higgins wished not only the identity of the detainee and the place of detention to be recorded, but also the date and place of interrogations, together with the names of all those present. It was known that torture was most often practised during interrogations.

61. Mr. MAVROMMATIS said that he was not opposed to Mrs. Higgins' proposal, but it seemed superfluous. Article 7 of the Covenant was a very general provision, whereas the amendment proposed by Mrs. Higgins related to matters coming under the penal procedure in force in the States parties. He was of the view that the Committee should not enter into details, because that could mean having to deal with them all and becoming diverted from the desired goal.

62. Mr. WAKO said he agreed with Mr. Mavrommatis. However, if the Committee decided to adopt Mrs. Higgins' proposed amendment, it should be inserted immediately before the last sentence of paragraph 10. Furthermore, he thought that it would be advisable to delete the second sentence proposed by Mrs. Higgins. If there appeared to be grounds for providing the information concerned to the competent authorities and if, in appropriate circumstances, when a case went before the courts the information could be useful for the investigation, it would be quite inappropriate to communicate them to the family and lawyer of the detainee. Every effort must be made to avoid unfortunate situations such as physical reprisals by the family of a detainee against an interrogator alleged to have been guilty of torture whose identity was known to the family.

63. Mr. AGUILAR URBINA endorsed the comments of Mr. Mavrommatis. Furthermore, Mrs. Higgins' proposal related to the question of interrogations, and he was not sure it belonged in paragraph 10. It would perhaps be more judicious to insert Mrs. Higgins' proposal in paragraph 11, which dealt with confessions.

64. He partly shared Mr. Wako's opinion about the amendment submitted by Mrs. Higgins. He also thought that the family of a detainee should not necessarily be provided with all the information concerned, particularly as it had been observed that the reactions of families could sometimes impede the investigation. On the other hand, the information should be accessible to lawyers so that they could better defend their clients. It would be an additional guarantee for the protection of individuals against torture.

65. Mr. LALLAH said he believed that Mrs. Higgins wished to give families and lawyers the opportunity to challenge the admissibility of statements obtained by torture during the investigation. It was precisely to avoid situations in which confessions were extracted under duress, that the information she mentioned should be recorded. In proposing to add the two sentences, she must have had in mind the situation in Northern Ireland where statements by detainees had often been obtained by torture or by treatment prohibited under article 7 of the Covenant.

66. In conclusion, he proposed that the two sentences proposed by Mrs. Higgins should be inserted in the revised draft general comment.

67. Mr. HERNDL said that, like Mr. Mavrommatis, he thought that the Committee should not go into details on the point. Although he understood the concern which had prompted Mrs. Higgins' proposal, he nevertheless did not think it necessary to adopt it. However, if the Committee decided otherwise, he would like the second sentence of Mrs. Higgins' proposal to be reworded to recommend that the information should be accessible to lawyers, without mentioning the families of detainees.

68. Mr. PRADO VALLEJO said that he fully endorsed Mrs. Higgins' proposal. He failed to understand what could justify an investigation taking place in secret. The Committee should take care not to condone either directly or indirectly procedures involving secrecy. To that end, too many guarantees were better than too few. It was known that instances of torture most frequently occurred at the interrogation stage.

69. He had no preference as to the paragraph in which Mrs. Higgins' proposal would best be inserted, but thought that it should be adopted by the Committee. He quoted the example of his country, Ecuador, where a representative of the Public Prosecutor's Office had to be present at all interrogations, otherwise the findings of the interrogation were null and void. That was a guarantee against confessions being extracted by torture. He was certain that all members of the Committee agreed on the need for such guarantees. He recalled that, in its early stages, the Committee had been seized of several complaints from people who had been subjected to interrogations conducted by individuals who were hooded so that they could not be identified and prosecuted. He saw no reason for being uneasy about families knowing the date and place of interrogations, together with the names of those present. He therefore fully supported Mrs. Higgins' proposal which he considered as an essential guarantee in view of the conditions under which interrogations frequently took place.

70. Mr. DIMITRIJEVIC endorsed Mrs. Higgins' idea. He observed however that, in the course of time the Committee's general comments on articles of the Covenant had developed into a sort of interpretation of its provisions. The Committee should not start recommending to States parties what they should do in matters of criminal procedure. That would be going rather far. The Committee should confine itself to formulating its interpretation of given provisions of the Covenant. Accordingly, it would not be advisable to incorporate Mrs. Higgins' proposal in paragraph 10. On the other hand, the idea might be taken up in paragraph 11. That would constitute an additional guarantee to prevent statements being obtained by torture and subsequently used at the hearing. A sentence might be added to paragraph 11 stating that, in the Committee's opinion, the registers should be impeccably kept and should be accessible. He also shared Mr. Wako's concern about providing too much information to families about investigation procedures. As one Committee member had said, it was a fact that families were not always the staunchest allies of justice. In conclusion, he thought that paragraph 11 could be recast to take account of Mrs. Higgins' proposal without giving the impression that the Committee wished to dictate criminal procedure to States parties.

71. Mrs. CHANET said she understood that the purpose of Mrs. Higgins' proposal was to take up a number of the principles appearing in the Body of Principles for the Protection of All Persons under Any Form of Detention or

Imprisonment, which had been adopted by the General Assembly. In her view, the aim was not to take up principles which constituted legal guarantees as such, but to rely on guarantees directly linked to the prevention of torture. The amendment to paragraph 10 proposed by Mrs. Higgins went in that direction. It was important that the names of all those who had been present at the interrogation of a detainee should appear in a register. On the other hand, it was not necessary to provide that information to the family; it would be more prudent to communicate it solely to the detainee and his lawyer. The proper place for Mrs. Higgins' proposal was in paragraph 10. The measures she suggested fitted in perfectly with those already set out in that paragraph, which dealt with methods of establishing the conditions under which interrogation should take place so that it would subsequently be possible to identify and prosecute individuals who had been guilty of torture. Nevertheless, she understood the concern of members of the Committee who considered that adopting Mrs. Higgins' proposal, would entail going into too much detail. She suggested that paragraph 10 might possibly be shortened so as to preserve its general tone.

72. Mr. SADI said he understood that behind Mrs. Higgins' idea was the desire to indicate measures which would truly have a deterrent effect with regard to torture and the obtaining of evidence by that means. The reason why, in many countries, it was possible to continue practising torture with impunity was basically because those who did the torturing "had no faces" - their identity was not known. A very effective deterrent would precisely be to reveal the names of those individuals. Such a system certainly had its drawbacks, as Mr. Wako had stressed by pointing out the possibility of reprisals by the families, but it offered so many advantages that, all things considered, it was entirely desirable from the standpoint of the interests of detainees. To make known the identity of those who resorted to torture could prove a very effective way of putting an end to that inhuman practice. However, he considered that the word "recommends" reflected an idea which jarred with the tone of the Committee's general comments as a whole. He would prefer to say that the Committee "considered" that such information could constitute a useful additional guarantee against acts of torture and the obtaining of evidence by torture.

73. Mr. MYULLERSON said that, like Mr. Prado Vallejo, he thought that detainees should be afforded as many guarantees as possible. But the matter fell rather in the purview of the jurists who drafted international human rights treaties. In his view, a distinction should be made between what was necessary to prevent torture and what the Committee could say in its general comment on article 7 of the Covenant. The Committee could not cover all aspects of the question of guarantees in its general comment. Mrs. Higgins was nevertheless right to consider that the date and place of interrogations, together with the names of those present, should be recorded in a register. In that sense, the best guarantee would surely be that families, or even representatives of non-governmental organizations or members of the Committee should be present at interrogations. Clearly, that idea was not practicable and furthermore, article 7 of the Covenant did not stipulate anything of the sort. He therefore proposed that no mention of the families of detainees should be made in the second sentence proposed by Mrs. Higgins. Like Mr. Mavrommatis, he thought that the Committee should refrain from going into detail on the matter and he would therefore not press for the two sentences

proposed by Mrs. Higgins to be added to paragraph 10. If, however, the Committee decided to include them in its general comment, they should appear in paragraph 10, immediately before the last sentence, and should not mention the families of detainees.

74. Mr. ANDO said that, in the main, he agreed with Mr. Mavrommatis. The Committee should remain faithful to the principles proclaimed in the provisions of the Covenant. Furthermore, he shared Mr. Dimitrijevic's view that the Committee could not recommend that States parties should adopt measures on the matter. The wording agreed upon must be in keeping with the spirit and purpose of the Committee's general comments. If, however, the Committee decided to adopt Mrs. Higgins' proposal, it should appear in paragraph 10. Since the second sentence of that paragraph dealt, inter alia, with interrogations, it could be followed by wording covering Mrs. Higgins' idea. The part of paragraph 10 concerned with detention, including incommunicado detention, could then become a separate paragraph. In short, he proposed, first, distinguishing provisions relating to interrogations from those relating to detention and secondly, to incorporating the present paragraph 11 in the two new paragraphs thus created.

75. Mr. LALLAH thought that, although the Committee must of course remain faithful to the various provisions of the Covenant, it would largely depart from the spirit of the general comments if it stopped there. The purpose of the comments was to assist States parties by pointing out the provisions and principles that should be respected in practice. He cited the example of Chile where, at a certain period a host of people had been detained in a multitude of places many of which were not official places of detention and no one, not even their own families, could find out where they were. In view of that type of situation, he thought it was entirely legitimate for the Committee to examine the specific implications of article 7 of the Covenant. It would be very useful for the Committee to affirm that any statement obtained under torture could under no circumstances be used in proceedings. Disclosure of the identity of persons conducting interrogations would enable counsel to call them as witnesses, for example. Furthermore, it would constitute an effective deterrent against torture. Like Mrs. Chanet and Mr. Myullerson, he thought that Mrs. Higgins' proposal belonged in paragraph 10. Furthermore he was not convinced of the desirability of restricting access to the information mentioned by Mrs. Higgins to lawyers. On the contrary, it would be right for such information to be made available also to families.

76. Mr. PRADO VALLEJO observed that, in all the general comments which it had formulated over the years, the Committee had always gone further than the provisions of the Covenant as such and had provided interpretations of them. In that connection, he reminded members of the discussions to which article 6 had given rise. It must be appreciated that the intention of the general comment on article 7 was in fact to ask States parties to regard certain practices as crimes against humanity.

77. It would be quite in order for the counsel of a detainee who had been the victim of torture to be able to communicate to the family the names of the individuals who had been present at the interrogation. He did not understand

what misgivings the Committee could have about the second sentence proposed by Mrs. Higgins. In his view, her entire proposal should be adopted; he had no preference with regard to the paragraph in which it would appear.

78. The CHAIRMAN suggested that Mrs. Higgins' proposal should be incorporated in a formulation that he would submit for consideration by the Committee. He suggested adding, immediately before the last sentence in paragraph 10, a sentence which read: "To the same effect, the time and place of all interrogations should also be recorded, together with the names of all those present, and this information should be open to the detained person and his or her lawyer".

79. Mr. MAVROMMATIS observed that there were innumerable ways of trying to protect people against torture and confessions obtained by torture. The Committee could just as well give its views on the criteria for deciding on the admissibility of a confession or determining on whom the burden of proof rested. Was that not also part of the guarantees? He could not see why the Committee should choose one method rather than another. Having said that, he thought that the idea underlying Mrs. Higgins' proposal was excellent and consequently had no objection to the Committee adopting the amendment proposed.

80. The CHAIRMAN invited the Committee to resume the discussion on the matter at its following meeting.

The meeting rose at 1 p.m.